

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, :

-against- :

16 Cr. 277 (GBD)

BANY LOPEZ-EGUIZABAL, :

Defendant. :

**SENTENCING MEMORANDUM ON BEHALF  
DEFENDANT BANY LOPEZ-EGUIZABAL**

Dated: New York, New York  
February 1, 2017

Respectfully submitted,

**RICHARD B. LIND, ESQ.**  
880 Third Avenue, 13<sup>th</sup> Floor  
New York, NY 10022  
*Attorney for Defendant  
Bany Lopez-Eguizabal*

**RICHARD B. LIND**

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February 1, 2017

**By ECF & Fedex**

Hon. George B. Daniels  
United States District Judge  
U.S. Courthouse  
500 Pearl Street  
New York, NY 10007

Re: United States v. Bany Lopez-Eguizabal  
16 Cr. 277 (GBD)

Dear Judge Daniels:

This letter is submitted on behalf of Defendant Bany Lopez-Eguizabal (“Bany” or “Defendant”), who is scheduled to be sentenced by this Court on February 9, 2017. For the reasons stated herein, we request a sentence of time served.

**BACKGROUND**

As the presentence report (“PSR”) states, on October 13, 2016, one-count felony information S5 16 CR 277 (GBD) was filed in this District, charging Bany with conspiracy to violate the Maritime Drug Law Enforcement Act, 46 U.S.C. § 70506(b). PSR, ¶¶ 1-2. On the same date, Defendant appeared before this Court and pleaded guilty as charged, pursuant to a written plea agreement with the government. Under that agreement, the parties stipulated that the Total Offense Level for Bany’s conduct was 33, and that his Criminal History Category was I, yielding a Guidelines sentencing range of 135 to 168 months’ imprisonment. See PSR, ¶ 3.

## **STATEMENT OF THE FACTS**

### **A. The Offense Conduct**

Bany and his three co-defendants were apprehended by the U.S. Coast Guard on March 8, 2016 on a vessel commonly known as a “panga” or “go-fast” boat located 213 nautical miles off the coast of the Galapagos Islands. On board the go-fast, the Coast Guard boarding team found, among other things, 11 large bales. A sample from the bales field tested positive for cocaine. In total, approximately 416 kilograms of cocaine were seized. All four defendants were detained until entering federal custody in April 2016. PSR, ¶¶ 9-18.

### **B. Bany’s Personal History**

Bany was born in September 1981 in Peten, Guatemala, a small fishing village where he has lived most of his life. His father was employed as a fisherman and his mother sold fish to neighbors prior to his parents’ deaths from cancer in the last few years. Following his father’s path, Bany has been employed as a fisherman his entire life. Indeed, he dropped out of school after the 4<sup>th</sup> grade to assist his father. Bany has eight siblings, all of whom reside in Guatemala. PSR, ¶¶ 39-41, 49-50.

Bany married Sulma Karolina Gomez-Lopez in Guatemala in 2001. Their marriage has resulted in the birth of six children, ranging in age from 12 years to four months; the eldest child is retarded, according to Bany. Photos of Bany’s children and wife are annexed hereto as Exhibit A.

In the PSR interview, Bany related that this arrest has been “emotionally and financially devastating to his family.” PSR, ¶ 42. Bany also stated that his family has had to re-establish their household on two prior occasions; and that when he is released, he will resume residing with his wife and children. Bany further noted that although he is incarcerated, he works for other inmates, by cleaning, cooking and washing their clothes; the money he earns is subsequently deposited into his inmate commissary account; he uses a portion of this money to support his family which is economically suffering. PSR, ¶¶ 43-44.

**DISCUSSION****POINT ONE****THIS COURT SHOULD SENTENCE  
BANY TO A PERIOD OF TIME SERVED****A. Relevant Considerations**

Since counsel for Bany's co-defendants have eloquently articulated relevant considerations in their sentencing submissions, we will not repeat most of them here. Nonetheless, we would be remiss if we failed to refer the Court to nearly identical circumstances in which two eminent Judges in this District have imposed sentences far below the Guidelines sentencing range. Thus, in *United States v. Prado*, 15 Cr. 455 (JSR), Judge Jed Rakoff sentenced all three defendants to 24 months' imprisonment (Doc. Nos. 56, 57, 58)(Apr. 5, 2016) despite the fact that their Guidelines range was greater than here. Also in *United States v. Franco*, 15 Cr. 731 (KMW), Judge Kimba Wood, in a similar case, also sentenced the defendants to two years' imprisonment. *Id.* (Doc. Nos. 56, 58)(Jul. 18; Jul. 27, 2016).

Most compelling, however, are the sentences imposed by this Court on Bany's co-defendants in this very case. Your Honor sentenced defendants Bailon-Hernandez (Doc. No. 47)(Dec. 15, 2016), and Sinisterra-Solis (Doc. No. 55)(Jan. 12, 2017) to 18 months' imprisonment; and imposed a 16-month term of imprisonment on defendant Marquez-Riascos (Doc. No. 58)(Jan. 12, 2017). Certainly no greater sentence should be imposed here.

There are additional reasons why Bany should be sentenced to a term of time served. Bany has no criminal record, *see* PSR, ¶¶ 33-38; he is remorseful about his conduct; and he timely pleaded guilty rather than proceed to trial. In addition, Bany made an honest and explicit "safety-valve" – type proffer to the government before the government extended a plea offer to him. These actions demonstrate acceptance of responsibility and a new-found maturity, which is reflected in his letter to the Court, annexed hereto as Exhibit B.

Moreover, as is evident from the PSR, Bany enjoys strong support from his wife, relatives, and a host of community organizations, as reflected in the letters collectively annexed hereto as Exhibit C. This substantial network will make any future criminal activity highly unlikely. *See e.g. United States v. Bello*, No. 08 CR 801 (JBW), 2009 WL 1310791, at \*2 (E.D.N.Y. May 5, 2009)("It is unlikely that Bello will engage in further criminal activity in light of his remorse, his devotion to his family, and the support that his family will provide him during his imprisonment and upon release"); *United States v. Hernandez-Castillo*, No. 05 Cr. 1033 (RWS), 2007 WL 1686686, at \*5 (S.D.N.Y. Jun. 7, 2007)("Also pursuant to § 3553(a)(1), the Court takes note of the significant network of friends and family that is ready to support Hernandez-Castillo upon his release from

RICHARD B. LIND

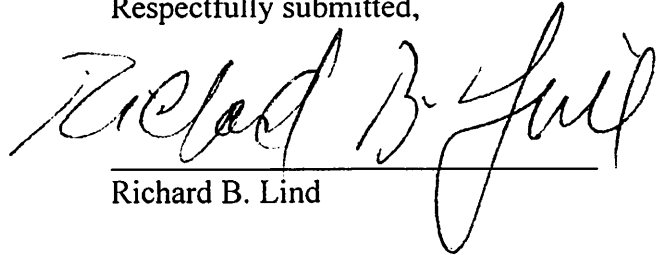
4

prison"). Moreover, even a short period of incarceration would deprive Bany's children of his paternal love and support.

**CONCLUSION**

In sum, for the foregoing reasons, we submit that this Court should sentence Bany to time already served, coupled with an order of removal.

Respectfully submitted,

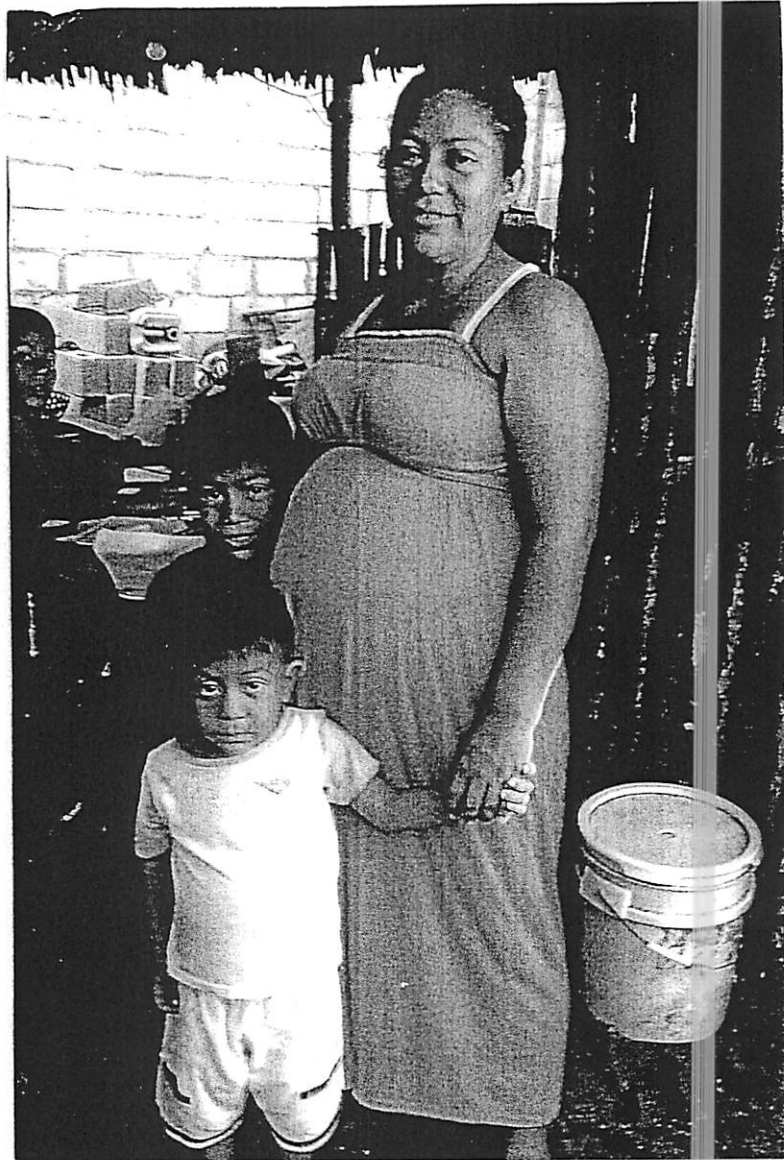
A handwritten signature in black ink, appearing to read "Richard B. Lind", is written over a horizontal line. The signature is cursive and stylized.

Richard B. Lind

Enclosures

cc: AUSA Jason Swergold (w/ encls.) (by ECF)  
U.S. Probation Officer Michael Fisher (w/ encls.) (by email)

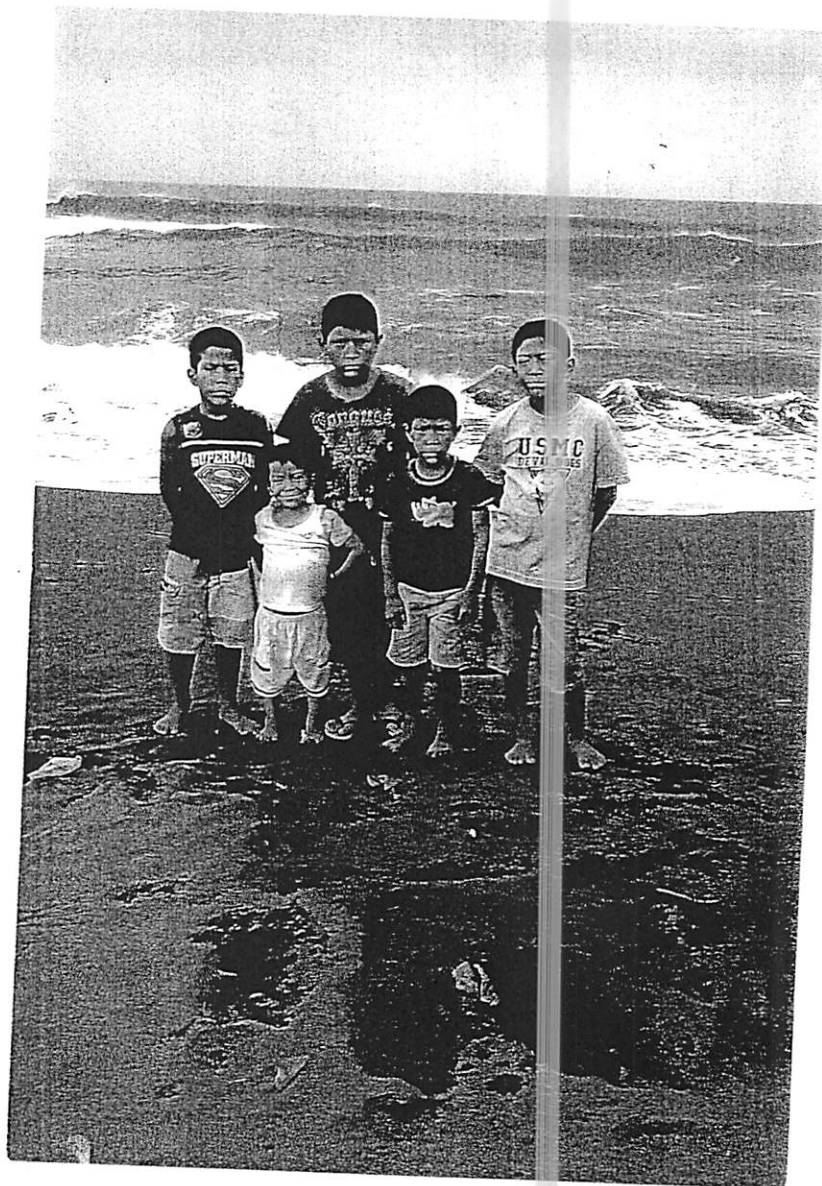
## **EXHIBIT A**











## **EXHIBIT B**

[Translation from Spanish. Punctuation has been added for clarity.]

Honorable Judge George Daniels

Through this letter that I am writing you with all due respect, I would like you to learn what part of my life has been like.

I grew up in a very poor town called *Playa Tecojate*, Municipality of *Nueva Concepción*, *Escuintla Department*. With a great deal of effort I went to school through 4<sup>th</sup> grade of grade school, and it wasn't possible for me to continue my studies because I had to help my parents work in fishing. We were a family of nine siblings and as you can understand there are many of us. A short while later my parents died. Everything became more difficult for me and my siblings, because in my community there is no other option than fishing. It is very hard work and poorly paid. We had to work a lot to barely be able to eat.

I got married when I was 21 with the mother of my six children and my last child was born while was here in prison. Unfortunately, all of this led me to take the worst decision in my life by accepting the proposal of illegal work when I was offered to make more money than what I was making by fishing. I felt very pressured because my wife was pregnant and it was very difficult for me to support my children. Without measuring the consequences of my acts I accepted that job.

Believe me your honor, I am very repentant for this bad decision that I took due to my financial need. My family is facing many difficulties without me, because I was the only one that worked so that they could eat and pay for my children's studies.

This is why I am apologizing to you and to the United States of North America. I am asking you to be merciful so that you can give me another opportunity to return to my family as soon as possible, since they need me so much, and I also need them back in my life. Today I am a man who is more conscious of my actions. And I am sure that with my daily work in fishing I can feed my family without getting into problems.

May God bless you and your nation.

Thank you for listening to my words.

[Signed]

Bany Lopez Eguizabal

## **EXHIBIT C**

Guatemala, January 11, 2017

To the Honorable Judge George B. Daniels  
United States District Court

With all due respect I am addressing you in the first place to greet you and wish you success with your daily judicial tasks.

Honorable Judge, I am Sulma Gomez, the wife of Bany Concepcion Lopez Eguizabal. Up till now I have known my husband to be person with a noble heart, a good husband, and above all a good father. Even though he lost his parents a long time ago he has been able to love his children unconditionally. He never left us, and now that he is far away we are suffering because we have limited financial resources. It was with a great deal of effort that my husband provided our children with schooling, clothes, shoes, since in this country there are very few work opportunities. Even so, his work was honest. My children are waiting for their father and asking when he is going to return. I can only tell them to be patient that he is coming back soon.

I am working to be able to feed them; the older children try to help me by helping other people to clean fish since we live near the beach. But it is not enough because we have to take care of the littlest ones and of my oldest child, because he is a child with special needs. He doesn't understand things and he doesn't speak much. He only spoke and smiled with his father and he used to wait for him impatiently.

It is for these reasons that I take the liberty, without meaning any offense Honorable Judge, for mercy. Please forgive my husband's offense to society. He had never done something like this before. But I imagine that the circumstances led him to make this decision, without thinking that instead of helping his children he would leave them off worse than before because he was the one who provided for the children, and now he is far away. I have 6 children, 5 children and a 5 month old baby who doesn't know his father.

It is difficult, Your Honor, to provide for this family. I still don't know how many children can continue studying. This year we applied for scholarships but still haven't received an answer. This is why I took the liberty of writing you so that you can take my situation and that of my children into account.

I believe that being separated from his family has served as a punishment for my husband, and I am asking for the opportunity of having my husband return home and of continuing to work honestly for his family.

I take my leave, trusting in your wisdom to judge.

Sulma Karolina Lopez de Lopez

Guatemala, January 11, 2017

Association of Artisanal Fishermen  
El Fortunato  
Playa Tecojate, Sector 2  
Nueva Concepción, Escuintla  
Guatemala, C.A.

To the Honorable Judge George B. Daniels  
United States District Court

A cordial greeting from the Association of Artisanal Fishermen "El Fortunato"; we wish you success in your daily duties.

By means of this letter we wish to inform you, Honorable Judge, that as a fishermen association we know Mr. Bany Concepcion Lopez Eguizabal, bearer of Personal Identity Document No. DPI 2808643961705, in depth. He is an artisanal fisherman dedicated to fishing on the high seas, work with which he supports himself and his family.

We recommend him and we consider Mr. Bany Concepcion Lopez Eguizabal to be a humble, respectful and hardworking person.

With nothing further to add, grateful for your kind attention,

Yours truly,

[A stamp: Image of a seal.  
Association of Artisanal  
Fishermen  
TECOJATE Y FORTUNATO]

[Signed]  
Legal Representative of the Fortunato Association



Guatemala, January 11, 2017

Evangelical Church  
The Voice of God Peniel  
Playa Tecojate, Nueva Concepción,  
Escuintla, Guatemala

To the Honorable Judge George B. Daniels  
United States District Court

We cordially greet you, wishing blessings for you in the name of God Our Creator, and that the Lord Jesus Christ ensures that all judicial work prospers.

By means of this letter we want to inform you, Your Honor, that Mr. Bany Concepcion Lopez Eguizabal, bearer of Personal Identity Document No. DPI 2808643961705, was a member of the evangelical church The Voice of God Peniel. We attest that he is from a humble, honest family. His wife, Mrs. Sulma Karolina Gomez Lopez de Lopez, is an active member of said church. She has six children with him, the oldest is 12 years old, who has a disability, and the youngest is 5 months. She takes care of them and works at the same time. We attest to the fact that they are people of little means, and that since we have known Mr. Bany Concepcion Lopez Eguizabal he has always worked as a fisherman on the high seas to support his family.

Therefore we are issuing this letter for the ends deemed appropriate, on the 11<sup>th</sup> of January, 2017.

Sincerely,

[Signed]  
Carlos Garcia Chavez  
Church Pastor

[Signed]  
Doroteo Manolo Gomez Gaitan  
Secretary General of the Church

[Stamped seal:  
Peniel Evangelical Church  
Colonia Mardoqueo Orellana  
Playa de Tecojate  
Nueva Concepcion, Escuintla]



Guatemala, January 11, 2016 [sic]

Community Council for development  
COCODE  
Playa Tecojate, Sector 2  
Nueva Concepción, Escuintla  
Guatemala, Central America

To the Honorable Judge George B. Daniels  
United States District Court

The community of Village Laguna Las Pescas de Playa [Village Laguna Fishing On the Beach],  
Tecojata, Sector 2

Certifies:

That Mr. Bany Concepcion Lopez Eguizabal has lived in this village since he was a child. He was a native of Peten Department and immigrated with his parents to this place. They are an honest family of limited means, dedicated since then to artisanal fishing on the open seas.

The community knows him to be a hard-working person, very courteous, humble, and dedicated to his family, because he has six children and his wife Sulma Karolina Gomez Lopez de Lopez, whose profession has always been a housewife, and Mr. Bany has always been an artisanal fisherman on the open seas.

The family has suffered a lot because they lost their land and house during Hurricane Mitch. They ended up living in the huts that belonged to some villagers, until in 2011 the government gave them access to land which was donated to those who had lost their land. They received a house where his wife and children presently live.

They have always fought hard to get ahead, and although they are a numerous family with little financial resources they have always worked honestly. We never saw Mr. Bany do anything wrong and we know him to be person who has taught his children good ethical Christian principles and morals. As a father and son he has been impeccable because he took care of his parents till their last breath. He has always belonged to an Evangelical church and belongs to a Christian music group; he has helped the community and the school in the village.

And for the legal use of the interested party I hereby sign and seal this document on the 11th day of January, 2017.

Yours very truly,

[Signature]

Williams Estuardo Divas Estrada

[Seal:

COCODE Village Laguna Las Pescas

Tecojate, Sector II

PRESIDENT

Nueva Concepción, Escuintla]

[Seal: Image of a pyramid  
Rural Official Co-Ed School  
Nueva Concepción Escuintla]

RURAL OFFICIAL CO-ED SCHOOL  
Playa Tecojate Sector 2, Nueva Concepcion, Escuintla  
[Eormplayatecojate2@gmail.com](mailto:Eormplayatecojate2@gmail.com)

Honorable Judge George B. Daniels,

By means of this letter, I, **JENDY JEANETH COLINDRES LOPEZ**, primary school teacher, bearer of Personal Identity Card No. 2451 10550 0506, residing at Trocha 8 Calle Chicales, director and teacher at the Rural Official Co-ed School Playa Tecojate Sector 2, Nueva Concepcion, Escuintla:

Hereby state that I know Mr. **BANY CONCEPCION LOPEZ EGUIZABAL**, bearer of Personal Identity Card No. 2808 64396 1705, a person whom I have known for several years. During this time he has demonstrated that he is an honest, responsible, and hard-working person, which is why I have no qualms in recommending him to any institution that he may designate.

And to this effect and to be remitted to where it may correspond, I place my seal and sign this letter of recommendation on a letter size page, stamped on the tenth of January of the year two thousand seventeen.

Vo.bo. [Signed] [Stamp: Rural Official Co-Ed School  
Director's Office  
Nueva Concepción Escuintla]

Jendy Jeaneth Colindres Lopez  
Director of the establishment  
Tel. 3197-7006

[Seal: Image of a pyramid  
Rural Official Co-Ed School  
Nueva Concepción Escuintla]

RURAL OFFICIAL CO-ED SCHOOL  
Playa Tecojate Sector 2, Nueva Concepcion, Escuintla  
[Eormplayatecojate2@gmail.com](mailto:Eormplayatecojate2@gmail.com)

Honorable Judge George B. Daniels,

By means of this letter, we, the undersigned Director and Teaching Staff of the Official Rural Co-ed School Playa Tecojate Sector 2 in Nueva Concepcion, Escuintla certify that the child ~~BANY CONCEPCION LOPEZ GOMEZ~~, bearer of Personal Identity Document No. C795PIM, issued by the Ministry of Education, is registered in sixth grade of primary school, for the present 2017 school cycle. He has been enrolled in academic studies starting in 2011 through the present; during this time the child has presented learning disabilities (AUTISM) and the school staff has provided him with special attention. He is the son of Mr. **BANY CONCEPCION LOPEZ EQUIZABAL**, and of Mrs. **SULMA KAROLINA GOMEZ LOPEZ**.

And to this effect and to be remitted to where it may correspond, I place my seal and sign this letter of recommendation on a letter size page, stamped on the tenth of January of the year two thousand seventeen.

[Signed]

Teacher: Seyra Yanira Flores Quinteros  
Personal ID Document – 1830 80122 0506

[Signed]

Teacher: Mirna Rebeca Castaneda Lopez  
Personal ID Document – 2179 62882 0513

[Signed]

Teacher: Midey Marisela Orellana Gomez  
Personal ID Document – 2454 034690513

[Signed]

Teacher: Marileny Asucely Medina Lopez  
Personal ID Document – 1583 46033 0513

Vo.bo. [Stamp: Rural Official Co-Ed School  
Director's Office  
Nueva Concepción Escuintla]  
[Signed]  
Jendy Jeaneth Colindres Lopez  
Director of the establishment  
Tel. 3197-7006